Goh Keng How v Raja Zainal Abidin bin Raja Hussin & Anor

HIGH COURT (JOHOR BAHRU) — ORIGINATING SUMMONS NO 24-440 OF 1994
ABDUL MALIK ISHAK J
14 JUNE 1995

Land Law *— Restraints on dealings — Caveats — Caveatable interest — Failure to state nature of claim in statutory declaration — Grounds of claim stated subsequently in affidavit in support of application to extend caveat — Whether court could consider grounds stated in affidavit — Whether court obliged to look only at statutory declaration — National Land Code 1965 s 323*

Land Law *— Sale of land — Bare trust — Bona fide purchaser for value — Purchase price paid in full — Whether vendor a bare trustee*

Limitation *— Trusts — Trust of land alleged — Land sold by trustee — Whether cause of action statute-barred — When arose — Limitation Act 1953 s 22(2)*

Civil Procedure *— Jurisdiction — Inherent jurisdiction — Whether court can extend private caveat indefinitely — Whether extension subject to statutory life-span of private caveats — National Land Code 1965 ss 328 & 417*

On 25 June 1993, one Long Yoke Wee ('Long') by a sale and purchase agreement ('the agreement') sold three pieces of land to the first defendant, Raja Zainal Abidin bin Raja Hussin ('Raja Zainal Abidin') for RM8m, which was paid in cash to Long. One of the peices of land ('the land') is the subject of the dispute. Long delivered to Raja Zainal Abidin the original issue documents of title to the three pieces of land together with the instruments of transfer in Form 14A duly executed by Long in favour of Raja Zainal Abidin and also handed over vacant possession. A private caveat had been lodged over the land on 14 January 1989 by one Goh Keng How ('Goh') and the statutory declaration in support of it ('the statutory declaration') stated that he claimed a caveatable interest in the land 'by virtue of certain documents' which clearly indicated his interest in the land. Long assured Raja Zainal Abidin that he would apply for its removal and this was done.

However, Goh applied ex parte and obtained an order on 20 June 1994 for an extension of the caveat 'until further order of the court' ('the court order'). In support of that ex parte application, Goh affirmed an affidavit dated 13 June 1994 ('the affidavit') claiming that Long held the land under a trust deed dated 2 July 1963 for Mingshu Syndicate ('the syndicate'), of which Goh was a partner. It was alleged that Long promised to transfer the land to the syndicate on 4 November 1968 but failed to do so. Subsequently, one Ho Choo Wing ('Ho'), who also claimed to be a partner of the syndicate,

A entered a private caveat over the land in December 1994. On 6 February 1995, the court allowed Raja Zainal Abidin to intervene and be added as the first defendant with Ho as the second defendant. The court order which extended Goh's private caveat prevented Raja Zainal Abidin from registering the instruments of transfer to the three pieces of land. As an aggrieved party, he applied to set aside the B court order and for other consequential reliefs. Counsel for both Goh and Ho submitted that limitation had yet to set in because the cause of action only accrued on 25 June 1993 when Long executed the agreement to sell the three pieces of land to Raja Zainal Abidin.

C **Held**, allowing Raja Zainal Abidin's application:

(1) Section 323(2) of the National Land Code 1965 ('the NLC') stipulates the requirement that in every application for entry of a private caveat, the nature of the claim shall be stated, and s 323(3) requires the same to be verified. Goh's statutory D declaration did not state the nature of the claim on which his application was based and he had failed to verify it. Thus, the grounds stated in Goh and Ho's applications were insufficient in law to support the caveats and they had to be removed forthwith.

(2) Goh's failure to disclose the existence of the trust deed in his statutory declaration estopped him from relying on its existence. E What was deposed to by Goh in his affidavit could not be considered as the court was only obliged to look at his statutory declaration. The failure to explain why Goh failed to disclose the existence of the trust deed in his statutory declaration must be held adversely against him.

F (3) When a beneficiary under a trust enters a private caveat instead of a trust caveat and fails to state in his statutory declaration the existence of that trust, he is said to be guilty of misconduct. Here, Goh and the syndicate failed to give notice to the world of their alleged interest as beneficiaries of the alleged trust and G consequently, it was void against Raja Zainal Abidin who could be described as a bona fide purchaser for value.

(4) It is trite law that when the purchaser of land has paid the purchase price in full, the vendor holds the land as a bare trustee and no longer enjoys any beneficial interest in the land. Likewise, Raja Zainal Abidin had paid the full purchase price of RM8m to H Long who then held the land as bare trustee for Raja Zainal Abidin.

(5) The wording of the court order extended Goh's private caveat indefinitely. Although the High Court has the power to extend the life-span of a private caveat, it should not extend it beyond I the six-year life-span provided under s 328. The general authority of the High Court under s 417 of the NLC must be distinguished with the powers given to a judge of the High Court under its inherent jurisdiction.

(6) The cause of action accrued on 4 November 1968 when Long failed to transfer the land to the syndicate as promised and was now statute-barred. The syndicate's solicitors had slept on their clients' rights and were negligent. Goh, Ho or the syndicate should proceed against their solicitors for negligence or alternatively proceed against Long for breach of contract.

(7) There had been a substantial delay by the alleged beneficiaries who had done nothing to transfer the land into their names for almost 30 years and failed to lodge a trust caveat or to endorse on the title Long interst as a trustee. Also, Goh's caveat had remained on the title for four years without any action being taken to assert his alleged interest. Those delays were material and it would be unjust to construe them against Raja Zainal Abidin.

[Bahasa Malaysia summary

Pada 25 Jun 1993, seorang yang bernama Long Yoke Wee ('Long') telah menjual tiga bidang tanah melalui suatu perjanjian jual beli ('perjanjian itu') kepada defendan pertama, Raja Zainal Abidin bin Raja Hussin ('Raja Zainal Abidin') untuk jumlah RM8 juta, yang telah dibayar secara tunai kepada Long. Salah satu daripada bidang tanah tersebut ('tanah itu') adalah isi perkara pertikaian ini. Long telah menghantar-serahkan kepada Raja Zainal Abidin dokumen hakmilik keluaran asal tiga bidang tanah tersebut bersama dengan suratcara pindahmilik di dalam Borang 14A yang telah ditandatangani oleh Long yang memihak kepada Raja Zainal Abidin dan juga telah menyerahkan milikan kosong. Suatu kaveat persendirian telah dimasukkan atas tanah itu pada 14 Januari 1989 oleh seorang yang bernama Goh Keng How ('Goh') dan akuan berkanun yang menyokongnya ('akuan berkanun itu') menyatakan bahawa beliau menuntut suatu kepentingan boleh kaveat di dalam tanah itu 'di bawah beberapa dokumen tertentu' yang dikatakan jelas menunjukkan kepentingan beliau di dalam tanah itu. Long telah memberi jaminan kepada Raja Zainal Abidin bahawa beliau akan memohon supaya kaveat itu dibatalkan dan itu telah dilakukan.

Bagaimanapun, Goh telah memohon secara ex parte dan mendapatkan suatu perintah pada 20 Jun 1994 untuk suatu perlanjutan kaveat itu 'sehingga perintah selanjut mahkamah ini' ('perintah mahkamah itu'). Untuk menyokong permohonan ex parte itu, Goh telah mengikrar suatu afidavit bertarikh 13 Jun 1994 ('afidavit itu') yang mengata bahawa Long telah memegang tanah itu di bawah suatu suratikatan amanah bertarikh 2 Julai 1963 untuk Sindiket Mingshu ('sindiket itu'), di mana Goh adalah seorang pekongsi. Adalah dikatakan bahawa Long telah berjanji untuk memindahmilik tanah itu kepada sindiket itu pada 4 November 1968 tetapi gagal berbuat demikian. Kemudiannya, seorang yang bernama Ho Choo Wing ('Ho'), yang juga mengatakan bahawa beliau adalah seorang pekongsi sindiket itu, telah memasukkan suatu kaveat persendirian

di atas tanah itu pada Disember 1994. Pada 6 Februari 1995, mahkamah telah membenarkan Raja Zainal Abidin untuk mencelah dan ditambahkan sebagai defendan pertama dengan Ho sebagai defendan kedua. Perintah mahkamah yang melanjutkan kaveat persendirian Goh itu telah menghalang Raja Zainal Abidin daripada mendaftarkan suratcara pindahmilik tiga bidang tanah tersebut. Sebagai suatu pihak yang terkilan, beliau telah memohon untuk mengenepikan perintah mahkamah itu dan untuk relief lain yang berbangkit. Peguambela untuk kedua-dua Goh dan Ho telah berhujah bahawa tindakan itu belum lagi dihadkan oleh masa kerana kausa tindakan itu hanya timbul pada 25 Jun 1993 apabila Long menyempurnakan perjanjian untuk menjual tiga bidang tanah itu kepada Raja Zainal Abidin.

Diputuskan, membenarkan permohonan Raja Zainal Abidin itu:

(1) Seksyen 323(2) Kanun Tanah Negara 1965 ('KTN') memperuntukkan keperluan bahawa di dalam setiap permohonan untuk pemasukan suatu kaveat persendirian, sifat tuntutan itu mesti dinyatakan, dan s 323(3) memerlukan supaya ia disahkan. Akuan berkanun Goh tidak menyatakan sifat tuntutan di atas mana permohonan itu bergantung dan beliau gagal menentusahkannya. Oleh itu, alasan yang dinyatakan di dalam permohonan Goh dan Ho adalah tidak mencukupi di sisi undang-undang untuk menyokong kaveat itu dan mereka mesti dibatalkan dengan segera.

(2) Kegagalan Goh untuk mendedahkan kewujudan suratikatan amanah tersebut di dalam akuan berkanunnya itu mengestop beliau daripada bergantung pada kewujudannya. Apa yang dideposkan oleh Goh di dalam afidavit beliau tidak boleh dipertimbangkan kerana mahkamah hanya diwajibkan untuk melihat kepada akuan berkanun beliau. Kegagalan untuk menjelaskan kenapa Goh gagal mendedahkan kewujudan suratikatan amanah itu di dalam akuan berkanunnya mesti diberikan pentafsiran bertentangan terhadap beliau.

(3) Apabila seorang benefisiari di bawah sesuatu amanah memasukkan suatu kaveat persendirian dan bukannya suatu kaveat amanah dan gagal menyatakan kewujudan amanah itu di dalam akuan berkanunnya, beliau dikatakan bersalah kerana salah laku. Di sini, Goh dan sindiket itu telah gagal memberi notis kepada dunia mengenai kepentingan mereka yang dikatakan itu sebagai benefisiari amanah yang dikatakan itu dan oleh itu, ia adalah tidak sah terhadap Raja Zainal Abidin yang boleh dikatakan adalah seorang pembeli bona fide untuk nilai.

(4) Adalah menjadi undang-undang mantap bahawa apabila seseorang pembeli tanah telah membayar harga belian sepenuhnya, penjual hanya memegang tanah itu sebagai seorang 'bare trustee' dan tidak lagi menikmati sebarang kepentingan benefisial di dalam tanah itu. Begitu juga, Raja Zainal Abidin

telah membayar harga belian penuh sebanyak RM8 juta kepada Long yang kemudiannya memegang tanah itu sebagai seorang 'bare trustee' untuk Raja Zainal Abidin.

(5) Susunan kata perintah mahkamah itu telah melanjutkan kaveat persendirian Goh bagi tempoh masa yang tidak pasti. Walaupun Mahkamah Tinggi mempunyai kuasa untuk melanjutkan jangka hayat sesuatu kaveat persendirian, ia tidak seharusnya melanjutkannya sehingga melampaui jangka hayat enam tahun yang diperuntukkan di bawah s 328. Kuasa am Mahkamah Tinggi di bawah s 417 KTN mesti dibezakan daripada kuasa-kuasa yang diberikan kepada seseorang hakim Mahkamah Tinggi di bawah bidang kuasa sedia adanya.

(6) Kausa tindakan itu telah timbul pada 4 November 1968 apabila Long gagal memindahmilik tanah itu kepada sindiket itu seperti yang telah dijanjikan dan ia sekarang dihalang oleh had masa. Peguamcara sindiket itu tidak melakukan apa-apa berkaitan dengan hak klien mereka dan adalah cuai. Goh, Ho atau sindiket itu sepatutnya membawa tindakan terhadap peguamcara mereka untuk kecuaian atau secara alternatifnya terhadap Long untuk kemungkiran kontrak.

(7) Terdapat kelengahan besar oleh benefisiari yang dikatakan itu yang tidak melakukan apa-apa untuk memindahmilik tanah itu ke dalam nama mereka selama hampir 30 tahun dan gagal memasukkan suatu kaveat amanah atau mengendors atas hakmilik itu kepentingan Long sebagai pemegang amanah. Lebih-lebih lagi, kaveat Goh telah berada di atas hakmilik itu selama empat tahun tanpa sebarang tindakan diambil untuk menegaskan kepentingannya yang dikatakan itu. Kelengahan tersebut adalah material dan ianya tidak adil untuk mentafsirkannya secara bertentangan terhadap Raja Zainal Abidin.]

[*Editorial Note*: The applicant and second defendant have appealed to the Court of Appeal vide Civil Appeal No J–02–386–95.]

Notes

For cases on caveats, see 8 *Mallal's Digest* (4th Ed) paras 1687–1775; [1989] Mallal's Digest 1084–1090, 1133–1134; [1990] Mallal's Digest 837–845, 897; [1991] Mallal's Digest 1318–1328; [1992] Mallal's Digest 1260; [1993] Mallal's Digest 970–980.

For a case on a bare trust of land, see 8 *Mallal's Digest* (4th Ed) para 1812.

For cases on the inherent jurisdiction of the court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2187–2190.

Cases referred to

Abigail v Lapin & Anor [1934] AC 491; (1934) 51 CLR 58 (folld)
Allcard v Skinner (1887) 36 Ch D 145 (refd)

Bachan Singh v Mahinder Kaur [1956] MLJ 97 (folld)
Bank of Tokyo Ltd v Mohd Zaini bin Arshad (Maria Pragasam, Intervener) [1991] 3 MLJ 50 (refd)
Crosbie-Hill v Sayer [1908] 1 Ch 866 (folld)
Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212 (folld)
Haroon bin Guriaman v Nik Mah bte Nik Mat & Anor [1951] MLJ 209 (folld)
KI Muhiudeen Rawther v KEP Abdul Kassim & Ors [1959] MLJ 257 (refd)
Khoo Teng Seong v Khoo Teng Peng [1990] 3 MLJ 37 (refd)
Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 719 (folld)
Midland Bank Trust Co Ltd & Anor v Green [1981] AC 513 (refd)
Miller v Minister of Mines [1963] AC 484; [1963] 1 All ER 109; [1963] 2 WLR 92 (refd)
Ng Kheng Yeow v Chiah Ah Foo & Ors [1987] 2 MLJ 330 (refd)
Palmer v Wiley (1906) 23 WN (NSW) 90 (refd)
Punca Klasik Sdn Bhd v Abdul Aziz bin Abdul Hamid & Ors [1994] 1 MLJ 136 (refd)
Fairlie, Re (1959) 76 WN (NSW) 475 (refd)
Jones, Re; Dale (Caveator) (1935) 35 SR (NSW) 560 (refd)
Saminathan v Pappa [1981] 1 MLJ 121 (folld)
Sim Kwang Mui Ivy v Goh Peng Khim [1995] 1 SLR 186 (folld)
Syarikat Jaya v Star Publications (M) Bhd [1990] 1 MLJ 31 (refd)
Tan Shiang Shong v Tan Lee Choon & Anor [1985] 2 MLJ 369 (folld)
Teh Bee v K Maruthamuthu [1977] 2 MLJ 7 (folld)
Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors [1974] 2 MLJ 45 (folld)
Lindsay Petroleum Co v Hurd (1874) LR 5 PC 221 (refd)
Vandyke v Vandyke (1976) 12 ALR 621 (refd)
Yeong Ah Chee v Lee Chong Hai & Anor and other appeals [1994] 2 MLJ 614 (folld)
Zeno Ltd v Prefabricated Construction Co (Malaya) Ltd & Anor [1967] 2 MLJ 104 (refd)

Legislation referred to

Limitation Act 1953 s 22(2)
National Land Code 1965 ss 323(1)–(3), 324, 325, 326(1B), 327, 328, 332(2), (3), 333, 344, 417
Rules of the High Court 1980 O 6 r 5, O 11
Land Titles Act (Cap 157) s 104 [Sing]
Land Charges Act 1952 ss 13(2), 20(8) [Eng]
Real Property Act 1900 [NSW] s 72(2)(c)

Christina LE Chia (*Khor Loke Yew* with her) (*Christina Chia Ng & Partners*) for the first defendant/intervener.

Robert Lazar (*Humphrey Ball, D Baskaran* and *Rosita Yeo Swat Geok* with him) (*Yeo & Co*) for the applicant and second defendant.

Abdul Malik Ishak J: On 25 June 1993, Long Yoke Wee ('Long') by a sale and purchase agreement ('S & P agreement') (encl 8, exh 'RZA 1') sold three pieces of land comprised in Grant 21957 Lot 3523, Mukim of Pulai, Grant 944 Lot 892, District of Johor Bahru and Grant 20044 Lot 911, Mukim of Pulai (only Grant 21957 Lot 3523, Mukim of Pulai is the subject matter of dispute and in this judgment I shall refer to it as 'the said land') to Raja Zainal Abidin bin Raja Hussin ('Raja Zainal Abidin') for a sum of RM8m, which sum was paid in cash to Long. Long then handed the three original issue documents of title to the three pieces of land together with the instruments of transfer in Form 14A duly executed by Long in favour of Raja Zainal Abidin to the latter. Vacant possession was said to be handed to Raja Zainal Abidin. Before signing the S & P agreement, Long assured Raja Zainal Abidin that the three pieces of land were free from encumbrances and though there was a private caveat lodged on 14 January 1989 by Goh Keng How ('Goh') on the said land, Long still gave an assurance that he would apply to the Registrar of Titles to remove that private caveat. This was done. But as quick as lightning, Goh applied ex parte and obtained an order from Ariffin Jaka J on 20 June 1994, wherein the private caveat entered by Goh was extended *'sehingga perintah selanjut mahkamah ini'*. In support of that ex parte application, Goh affirmed an affidavit dated 13 June 1994 (encl 3) and claimed to be a partner of Mingshu Syndicate and that Long held the said land under a trust deed dated 2 July 1963 for Mingshu Syndicate. Incidentally, Ho Choo Wing ('Ho'), who also claimed to be a partner of Mingshu Syndicate, entered a private caveat on the said land — this was sometime in December 1994. Thus, on 6 February 1995, I granted prayers 1 and 2 of encl 9 and allowed Raja Zainal Abidin to not only intervene but also be added as the first defendant whereas Ho was ordered to be made a second defendant.

From the three affidavits of Goh (encls 3, 13 and 17) it would appear that sometime in 1959, a group of individuals operating under the name of 'Mingshu Estates and Johore Farms and Plantations' was said to have purchased the said land and Long was also said to be the manager of that syndicate at that time. It was also averred that Long held the said land on trust for the syndicate. This very syndicate was eventually registered as a business under the name of Mingshu Syndicate on 19 June 1963.

There were two deaths in this case. Long died on 12 November 1994 whilst Goh died on 8 May 1995. The death of Goh must have been upsetting and, towards this end, I ordered on 27 May 1995 that the person whom the interests of the deceased Goh is transmitted to or devolved upon be made a party to these proceedings. In due course by a summons-in-chambers (encl 30), Wu Shu Chen being the sole executrix and beneficiary of the estate of the deceased Goh applied to be substituted as the plaintiff in this originating summons and on 9 June 1995, I granted her application.

The court order dated 20 June 1994 which extended the private caveat of Goh has prevented Raja Zainal Abidin from registering the instruments of transfers to the three pieces of land in his name. As an

aggrieved party, he now seeks to set aside that court order and prays for the reliefs as set out in encl 9 thereof.

Now, from the available evidence, Long was, before his death and at all material times, the registered proprietor of the said land (in fact Long's name appeared in all the three pieces of land) and from exh RZA15 in encl 15, the register document of title was issued in his name on 23 October 1967. For almost 28 long years, Long was, before his death, the registered proprietor of the said land and was armed with the original document of title to the said land at all material times. For that period of time, Long held the title not as a trustee pursuant to s 344 of the National Land Code 1965 ('the NLC') but rather as a registered owner of the said land. The Federal Court in *Teh Bee v K Maruthamuthu* [1977] 2 MLJ 7, held that under the Torrens system, the register is everything and it would be wrong to allow an investigation as to the right of the person to appear upon the register when he holds the certificate of title. At the High Court stage, Ajaib Singh J (as he then was) said at p 10 col 1E–G:

> Under s 78(3) of the National Land Code the alienation of state land under qualified title takes effect upon the registration of a register document of qualified title pursuant to the provisions of ss 177 and 178 referred to in s 181 which is one of the three sections in Ch 2 of Pt Eleven of the Code. Section 89 of the National Land Code which provides for the conclusiveness of a register document of final title and s 92 which declares its indefeasibility are extended to apply to a register document of qualified title as well by virtue of ss 178(3) and 176(2) of the Code. Indefeasibility of title is the hallmark of the Torrens system of registration of land titles and our Land Code which is based on this system provides, with certain exceptions, for the indefeasibility of registered titles or interests in land and registered leases, charges and easements under s 340 ...

In another part of the judgment, his Lordship said [at p 10 col 2C–D]:

> It will be seen that the act of registration per se is paramount and when registered a title becomes indefeasible and remains so unless and until declared otherwise by the court which can only be done if the title can be successfully challenged within the somewhat restricted scope of the exceptions stated in s 340.

Translated to the facts of the present case, upon registration, Long obtained an indefeasible title to or interest in the said land, that is, a title or an interest which is free of all adverse claims or encumbrances not noted on the register. It is with these background facts that I now proceed to examine the various points raised by both parties.

Bona fide purchaser for value

It has been argued that Raja Zainal Abidin purchased the said land from Long and had paid the full purchase price. Prior to the purchase, the necessary searches were made at the land registry and as stated earlier the title reflected Long as the registered proprietor and Goh as a caveator on the said land. Goh caveated the said land on 14 January 1989 and in his

statutory declaration in support of his application (see para 7 of encl 8) precious little was said; this was what he said: A

> The grounds of our claim to the land are that we claim a caveatable interest on the land referred to in this schedule hereto by virtue of certain documents which clearly indicate our interest in the said land.

Section 323(3) of the NLC enacts as follows: B

> Any application under this section shall be accompanied by the prescribed fee and, so far as it sets out the claim giving rise thereto, be verified by a statutory declaration by the applicant or his advocate and solicitor.

What must be stated in the statutory declaration of Goh as to warrant his application under s 323(3) of the NLC? The answer is found in Judith Sihombing's *Commentary on the National Land Code* (2nd Ed) at p 754, where she states: C

> The statutory declaration required must describe the interest claimed to be capable of being caveated as well as evidence of the facts which have given rise to the existence of the interest or, the basis of the claim thereto. D

It would not be incorrect to say that Goh's statutory declaration reproduced earlier failed to measure up to the expectations of the law as lucidly set out by Judith Sihombing. Goh's statutory declaration did not describe the interest claimed capable of being caveated and neither did he produce evidence of the facts which have given rise to the existence of the interest as alleged by him. Why was there secrecy in Goh's statutory declaration? Why didn't Goh reveal the truth? In other jurisdictions, for instance in *Vandyke v Vandyke* (1976) 12 ALR 621, the Supreme Court of New South Wales held that a caveat which simply claims an interest under an estate or interest pursuant to a divorce settlement was defective in form as the caveat lodged did not comply with s 72(2)(c) of the Real Property Act 1900. Hutley JA at p 638 had this to say: E F

> The caveat is defective in form. A caveat is required to state 'the estate or interest claimed by the caveator' (Real Property Act s 72(2)(c)). Authorities which are binding on a judge of first instance make it clear that a caveat which simply claims an interest under an 'estate or interest pursuant to divorce settlement' does not even begin to comply with the section. There has been a uniform line of authority in New South Wales laying down what is required for a proper statement of the estate or interest on the lodgment of a caveat (see Baalman, *Torrens System in New South Wales* (2nd Ed) at p 309). G H

Mahoney JA in *Vandyke*'s case at p 643 had this say:

> There is no simple formula by which it is possible to differentiate between statutory provisions which are mandatory and those which are merely directory. Each provision must be categorized according to the legislative intention as seen from its context. There are, in my opinion, reasons why the context of s 72(2) should be seen as exhibiting the intention that its provisions should be mandatory. There is 'a strong line of distinction', *Cullimore v Lyme Regis Corp* [1962] 1 QB 718 at p 726; [1961] 3 All ER 1008, between provisions relating to the performance of a duty and provisions I

relating to a privilege or a power and the manner of its exercise. In the former class of case, where a duty to the public is involved, the consideration that the performance of that duty should be achieved may be a substantial one in favour of holding that the duty is validly performed, notwithstanding only a substantial and not a detailed compliance with the statutory procedures for its performance has been achieved. On the other hand, where there is granted a privilege or a power to do something which would otherwise not be lawful, or to interfere with the rights of others, prima facie, it is to be expected that the statutory provisions relating to its exercise were intended to be mandatory: *Clayton v Heffron* (1960) 105 CLR 214 at p 247; (1961) ALR 368 at p 379; *ex p Tasker; Re Hannan* [1971] 1 NSWLR 804 at p 815.

In another part of his judgment, Mahoney JA said this (at p 644):

> There has, in relation to the Torrens system legislation throughout Australia and in particular in this State, been a generally accepted view that there should be some particularity in the specification of the estate or interest upon which the caveator relies, see *Roclin Investments Pty Ltd v Makris* (1974) 7 SASR 485 and the cases there referred to: *Investment & Merchant Finance Corp Ltd v Kirkwood Estates Ltd* (1975) 5 ALR 191. In this State, the precious s 72(2), which required that the caveat 'shall contain a sufficient description to identify the land and the estate or interest therein claimed by the caveator' was interpreted in this way: *Re Jones* (1935) 35 SR (NSW) 560; *Re Fairlie* (1959) 76 WN (NSW) 475; cf *Gasiuanas v Minhold* (1964) 6 FLR 182.
>
> In 1970, s 72(2) was amended and the subsection in its present form substituted. That subsection requires that the estate or interest claimed shall not merely be 'identified' but 'stated'. Having regard to the course of decision in this State upon the subsection in its former form, the statutory intention appearing from the new s 72(2) is, in my opinion, that the requirement that there be a statement of the estate or interest claimed is mandatory.

In *Re Jones; Dale (Caveator)* (1935) 35 SR (NSW) 560, it was held that a caveat under s 72 of the Real Property Act 1900, must state the quantum of interest claimed; and, that the caveat in question, in stating that the interest claimed was an extension of a particular memorandum of lease without adding the period for which the extension was claimed, did not contain a description sufficient to identify the estate or interest claimed by the caveator. Briefly, the facts were that in a caveat against dealings, the caveator claimed 'an estate or interest in terms of agreement dated 17 December 1923, to grant and secure to me an extension of a memorandum of lease dated 29 November 1923, from William John Jones', and then followed a correct description of the land.

In *Re Fairlie* (1959) 76 WN 475, where in a caveat against dealings a caveator claimed 'an equitable estate or interest in fee simple with the registered proprietor as tenants in common under an agreement for joint venture in respect of the said land subject to the rights of one John McIvor under deed dated 4 September 1957'. On these facts, the court there held that a caveat under s 72 of the Real Property Act 1900–1956 must state the quantum of the interest claimed. That the share as tenant in common was not specified in the caveat and where a share was not specified the

quantum of the estate was not specified. In *Palmer v Wiley* (1906) 23 WN 90, it was held that a caveat under s 72 must state the quantum of estate or interest, and show how the caveator claims it. A caveat claiming an interest in land under an agreement made between A and B on a date mentioned is insufficient. Where a defective caveat is put on the file the registered proprietor does not waive his right to object to it by not taking steps to set it aside.

It is germane to mention here that although *Vandyke*'s case, *Re Jones; Dale (Caveator)*, *Re Fairlie* and in *Palmer v Wiley*, were concerned with s 72 of the Real Property Act 1900 — a statute of New South Wales, Australia yet the principles, in my view, propounded in those cases serve as valuable guidelines in construing sub-ss (2) and (3) of s 323 of the NLC. I am acutely aware that s 72 of the Real Property Act 1900 is differently worded from our s 323 of the NLC but it must not be forgotten that the Australian land system is the same with that of our land system. It is a Torrens system; a system where upon registration an indefeasible title is vested in the individual.

Section 323(3) of the NLC must be read together with s 323(2) of the NLC. Now, s 323(2) of the NLC, clearly and unequivocally provides that in every application for an entry of a private caveat, the application 'shall state therein the nature of the claim on which his application is based, and whether the caveat is to be expressed to bind the land itself or a particular interest only' whilst s 323(3) of the NLC, then goes on in equally unequivocal terms that 'so far as it sets out the claim giving rise thereto, be verified by a statutory declaration by the applicant or his advocate and solicitor'. Put differently, it is clear that s 323(2) of the NLC stipulates the requirement that the nature of the claim shall be stated and s 323(3) of the NLC requires the same to be verified. Thus, Goh's statutory declaration as reproduced in the early part of this judgment clearly did not state 'the nature of the claim on which his application was based' and, consequently, he has failed to verify the same. Why didn't Goh mention in his statutory declaration that he caveated the said land in his capacity as a partner of Mingshu Syndicate and that Long held the said land under a trust deed dated 2 July 1963 for Mingshu Syndicate ? If that was done by Goh, an entirely new complexion would be added to the case and Goh may then be said to have complied with the provisions of sub-ss (2) and (3) of s 323 of the NLC. I venture to say that since the private caveat would prevent the said land from being transacted and its very existence affect the rights of Long as the registered proprietor, then prima facie, Goh, the caveator, is expected to comply with the mandatory requirements of sub-ss (2) and (3) of s 323 of the NLC. Is it too much to ask of a caveator?

It was submitted that the very existence of the private caveat serves as a notice to Raja Zainal Abidin of Goh's equitable claim; yet there was blatant failure to disclose the full nature of Goh's claim in the statutory declaration thereby depriving Raja Zainal Abidin of the opportunity to appraise the situation. It was certainly wrong and misleading for counsel to submit that Raja Zainal Abidin should investigate the background of the

private caveat. Under the Torrens system, Raja Zainal Abidin need not wear the cap of an investigating officer to investigate the details of Goh's meagre and poorly drafted statutory declaration which did not comply with the requirements of s 323 of the NLC. If Raja Zainal Abidin is expected to do that then the whole concept of 'conclusiveness and completeness of the register' would collapse to the ground. It is my judgment that Goh's failure to disclose the existence of the trust deed in his statutory declaration estops him from relying on the argument of the existence of that trust deed where none is mentioned in the statutory declaration and, consequently, Goh must now only rely on what has been set out in his statutory declaration to justify the continued existence of the private caveat on the said land. Thus, what was deposed to by Goh in his affidavit affirmed on 13 June 1994 (encl 3) in regard to the existence of the trust deed cannot be considered by this court as this court is only obliged to look at the statutory declaration of Goh when he first lodged the private caveat on 14 January 1989 and Goh too cannot rely on that affidavit of his (encl 3) to ground his claim that the said land was held by Long in trust for Mingshu Syndicate. In *Sim Kwang Mui Ivy v Goh Peng Khim* [1995] 1 SLR 186, the Singapore High Court held that a caveator was not permitted to justify his caveat on grounds other than those given in the caveat. No explanation was offered as to why the defendant failed to disclose in his caveat that there was an oral agreement by the plaintiff to sell the property to him. As such, the defendant could not seek to justify the caveat on a ground which was not stated in the caveat. There the Singapore High Court had to construe the provisions of s 104 of the Land Titles Act (Cap 157) which reads as follows (the relevant portions only):

> (1) Any person claiming an interest in land, or any person otherwise authorised by any Act to do so, may lodge with the Registrar a caveat in the prescribed form;
>
> ...
>
> (4) Every caveat shall be signed by the caveator or by his solicitor, and shall contain —
>
> (a) an accurate description of the interest claimed; and
>
> (b) such description as may be sufficient to identify the land intended to be affected.

On appeal, the decision of the High Court was affirmed by the Singapore Court of Appeal.

Likewise, here there was no explanation at all as to why Goh failed to disclose the existence of the trust deed in his statutory declaration. All parties seem to have overlooked this vital point. The absence of any explanation on the part of Goh must be held adversely against him.

Next, it was argued that Goh as a beneficiary could enter a private caveat on the said land instead of lodging a trust caveat. It is crystal clear that under s 323(1)(b) of the NLC, Goh is entitled to lodge that caveat in his capacity as a beneficiary of any trust property (*Khoo Teng Seong v Khoo Teng Peng* [1990] 3 MLJ 37). But the point was made that when a beneficiary enters a private caveat instead of a trust caveat and fails to

positively state in his statutory declaration the existence of that trust, the beneficiary is said to be guilty of misconduct — a misconduct which will mislead an innocent purchaser who relies on the conclusiveness of the register document of title. Here, Goh, or even Mingshu Syndicate for that, matter failed to give notice to the world at large of their alleged interests as beneficiaries of an alleged trust. Thus, when Raja Zainal Abidin paid RM8m to Long he did not know of the existence of any trust on the said land and now it is too late in the day for either Goh or Mingshu Syndicate to deny Raja Zainal Abidin's legal right to the said land. It must be appreciated that there are provisions in the NLC (ss 332 or 333) for trust caveats to be lodged. Had there been a trust caveat on the said land the position of Goh would be stronger because the proviso to s 332(2) of the NLC and the registrar himself under s 332(3) of the NLC would protect him. Section 332(2) of the NLC reads as follows:

> (2) The effect of any trust caveat shall be precisely stated therein, and may be to prohibit, either absolutely or except subject to conditions, the registration, endorsement or entry of all or any of the following —
>
> (a) any instrument of dealing, or class or description of instrument of dealing, directly affecting the trust property;
>
> (b) any claim to the benefit of any tenancy exempt from registration granted directly thereout; and
>
> (c) any lien-holder's caveat in respect thereof:
>
> Provided that no such caveat shall prohibit the registration of any instrument which was presented prior to the time from which it takes effect, or the endorsement or entry of any claim or lien-holder's caveat where the application for endorsement or entry was received prior to that time.

Section 332(3) of the NLC reads thus:

> Where the registration of any instrument or the endorsement or entry of any claim or lien-holder's caveat is prohibited by any trust caveat, the registrar shall reject the instrument or, as the case may be, the application for endorsement or entry.

Goh or even Mingshu Syndicate could enter a trust caveat on the said land. That this is so is clearly reflected in s 333(1) of the NLC which enacts as follows:

> The registrar may enter a trust caveat on the application of —
>
> (a) the trustees for the time being of any land or interest; or
>
> (b) the person or body by whom any land or interest is first transferred to trustees; or
>
> (c) the person or body by whom any interest is created in favour of trustees.
>
> Provided that no application made by virtue of paragraphs (b) or (c) shall be entertained unless it is presented to the Registrar with the instrument transferring or creating the land or interest in question.

Even though Ho lodged a private caveat it seems he too followed the same style as Goh, in exactly the same words employed by Goh in the statutory

declaration verifying the nature of the claim and, consequently, all the weaknesses in Goh's caveat are to be found in that of Ho's with the result that Ho's private caveat do not affect the legal right of Raja Zainal Abidin to the said land. At any rate, Ho's caveat was lodged after Raja Zainal Abidin had purchased the three pieces of land (including the said land) from Long.

In *Midland Bank Trust Co Ltd & Anor v Green* [1981] AC 513, the brief facts were that in 1961, a father granted to his son a ten-year option to purchase the farm which the son farmed as a tenant. The option was not registered under the Land Charges Act 1952, and in 1967, the father, wishing to deprive the son of his option, conveyed the farm, then worth about £40,000, to the mother for £500. When the son found out about the conveyance, he sought to register the option and give notice exercising it. In proceedings commenced after the mother's death by the son (and carried on after his death by his executors, the present plaintiffs) against, inter alia, the mother's estate for, inter alia, a declaration that the option was binding on the estate, the judge held that the mother was 'a purchaser of a legal estate for money or money's worth' against the unregistered option which was void under s 13(2) of the Land Charges Act 1925, which provides:

> A land charge of ... class C ... shall ... be void as against a purchaser of the land charged therewith ... unless the land charge is registered in the appropriate register before the completion of the purchase: Provided that, as respects ... an estate contract created or entered into after the commencement of this Act, this subsection only applies in favour of a purchaser of a legal estate for money or money's worth.

By s 20(8) of the same Act '"purchaser" means any person ... who, for valuable consideration, takes any interest in land ... .' The Court of Appeal reversed the judge's decision. On appeal, the House of Lords, in allowing the appeal, held that on the clear words of the Act, the mother took an interest in fee simple for valuable consideration and so was a purchaser for money and accordingly the option, not having been registered, was void against her in as much as the words of the Act were not to be qualified by any requirement that a purchaser must take in good faith or that the money paid was not nominal.

Similarly, the alleged trust, in the present case, was not deposited with the registrar and no trust caveat was entered on the said land, consequently, the alleged trust (the validity of which has been challenged by Raja Zainal Abidin) is void as against Raja Zainal Abidin who, in my judgment, can aptly be described as a bona fide purchaser for value.

The effect of Goh's caveat

The pertinent question to ask is this: Would Raja Zainal Abidin be barred from purchasing the said land from Long even though Goh's caveat stared him in the face? In my judgment, Raja Zainal Abidin is not precluded from purchasing the said land for the simple reason that under s 324 of the NLC the Registrar acts in a purely administrative capacity in registering caveats

and is not concerned with the validity or propriety of the claims on which the caveat purports to be based. The mere existence of Goh's private caveat without full disclosure of his caveatable interest does not necessarily mean that Goh's equitable interest is stronger than that of Raja Zainal Abidin's. In *Punca Klasik Sdn Bhd v Abdul Aziz bin Abdul Hamid & Ors* [1994] 1 MLJ 136, it was held, inter alia, that the purchasers were not precluded or estopped from removing the 20 caveats even though the purchasers had prior knowledge of the existence of the caveats. In *Bank of Tokyo Ltd v Mohd Zaini bin Arshad & Anor (Maria Pragasam, Intervener)* [1991] 3 MLJ 50, it was held that the entry of a private caveat does not necessarily mean that the caveator has a better priority against another who has not as yet lodged his caveat.

Long had assured Raja Zainal Abidin that Goh had no caveatable interest and that Long undertook to remove the private caveat lodged by Goh. Raja Zainal Abidin had no reason to doubt Long's assurances as the titles to the three pieces of land were all registered in the name of Long for almost three decades. It is germane to mention here that s 89 of the NLC enacts that every register document of title duly registered shall be conclusive evidence of proprietorship. That Long had complete ownership of the said land is beyond doubt and it is demonstrated when he transferred undivided shares to a number of persons as can be seen in encl 13 of exh GKH11 where the old land title was exhibited. There is nothing in the register document of title to the said land to show that Long held that land on trust for almost three decades. Long was in fact free and not obliged to Goh or Ho or even to Mingshu Syndicate as far as the register document of title to the said land is concerned and Long in that sense could dispose of the said land to anyone for value. Had there been a trust caveat on the said land, Long's position might not be the same and he could not simply dispose of the said land to anyone for he is then said to hold the said land on trust for another person or body.

The Privy Council in *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212, held that the onus was on the caveator to satisfy the court that on the evidence presented to it, his claim to an interest in the property did raise a serious question to be tried and having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action by preventing the caveatee from disposing of his land to some third party. It is, I think, appropriate for me to quote in extenso that part of the decision of Lord Diplock which summarizes the law and this was what his Lordship said [at pp 214 col 2I–215 col 1F]:

> As was pointed out by the Federal Court in *Nanyang Development (1966) Sdn Bhd v How Swee Poh* [1970] 1 MLJ 145, it is the caveator who is the applicant in proceedings brought under s 326(2), and it is for him to begin and to satisfy the court that there are sufficient grounds in fact and law for continuing the caveat in force after the month has elapsed. This in their Lordships' view is plainly right. What constitute sufficient grounds they will discuss later after examining the alternative procedure open to the caveatee under s 327.

Whereas the procedure under s 326 for obtaining the removal of a caveat is available only to the caveatee, the procedure for applying directly to the court for an order of removal is available not only to the caveatee but also to any other person aggrieved by the existence of the caveat — typically a purchaser to whom the registered proprietor has contracted to sell the land but the sale has not yet been completed by a proper instrument of transfer duly registered. In their Lordships' view a distinction must be drawn between cases where the applicant is the registered proprietor of the land (ie the caveatee) and cases where the applicant is some other person who claims a right to an interest in it. In the former case the caveatee can rely upon his registered title as prima facie evidence of his unfettered right to deal with the land as he pleases; it is for the caveator to satisfy the court that there are sufficient grounds in fact and law for continuing in force a caveat which prevents him from doing so. So where, as in the instant case, the only parties to an application under s 327 are caveatee and caveator there is no difference between what the caveator must establish to obtain an extension of the caveat under s 326 and what he must establish to defeat the caveatee's application for removal of the caveat under s 327.

It is otherwise when the applicant under s 327 is someone other than the caveatee. He has no registered title to rely upon as prima facie evidence of his interest in the land. It is for him to begin by satisfying the court that there are sufficient grounds in fact and law for treating him as a person claiming such an interest in the land as would, if it were established, make him aggrieved by the existence of the caveat.

Applying the principles of *Eng Mee Yong's* case to the facts of the present case, the caveator in this case is Goh whilst Long is the caveatee. Raja Zainal Abidin is the purchaser to whom Long has contracted to sell the said land but the '*sale has not yet been completed by a proper instrument of transfer duly registered*' though the instruments of transfers in Form 14A had been duly executed by Long in favour of Raja Zainal Abidin and those instruments of transfer together with the titles to the three pieces of land (including the said land) are held by Raja Zainal Abidin. It is then for Raja Zainal Abidin to satisfy this court that '*there are sufficient grounds in fact and law for treating him as a person claiming such an interest in the land as would, if it were established, make him aggrieved by the existence of the caveat*'.

Are there sufficient grounds to make Raja Zainal Abidin in fact and in law an aggrieved person by the existence of Goh's private caveat? In my judgment, sufficient grounds can be garnered from the following set of facts:

(a) the S & P agreement executed between Raja Zainal Abidin and Long on 25 June 1993;

(b) the searches at the registry that disclosed that:

(i) Long had been the registered proprietor for almost 30 years; and

(ii) Goh lodged his private caveat on 14 January 1989 on the basis of a statutory declaration that did not disclose any caveatable interest as discussed in the early part of this judgment;

(c) the full purchase price of RM8m had been paid by Raja Zainal Abidin to Long; and

(d) the instruments of transfer in Form 14A had been executed by Long and kept by Raja Zainal Abidin together with the relevant title deeds.

Those facts constituting sufficient grounds as itemized above were the ones available at the time when Raja Zainal Abidin signed the S & P agreement with Long on 25 June 1993 and those facts played important roles in determining the fate of Raja Zainal Abidin. Must Raja Zainal Abidin exercise extreme caution when he knew of the existence of Goh's caveat that was filed on 14 January 1989? I do not think so. So long as Goh's statutory declaration did not reveal a caveatable interest, there was absolutely no reason for Raja Zainal Abidin to worry or suspect anything out of the ordinary.

Indeed Goh's caveat had remained on the title for approximately four years and there was no cause for suspicion whatsoever. If at all it would further support Long's assurance to Raja Zainal Abidin that Goh had no caveatable interest for two simple reasons. First, it is not uncommon for a registered proprietor to be totally unaware of the existence of a caveat on his land until he tries to deal with his land and is prevented from so doing by the presence of that caveat. Secondly, it is uncommon for a caveator like Goh, who claims a registrable interest, not to take any further action after caveating the said land. After all, as has been held in *Miller v Minister of Mines* [1963] 1 All ER 109, PC, the caveat is an interim procedure to temporarily freeze all dealings with the land pending the pursuit by the caveator of his alleged right or interest. Thus, the failure on Goh's part to timeously take any action to assert his alleged interest only serves to lend support for Long's assurance to Raja Zainal Abidin that Goh had no caveatable interest in the said land.

A great deal of time was taken up by the learned counsel acting for Goh to bring home the point that there were facts that ought to be considered and weighed so as to nullify Raja Zainal Abidin's legal right to the said land. Those facts related to the Mingshu Estates and Johore Farms and Plantations, the history of Mingshu Syndicate, the alleged trust deed and the events and occurrences that had happened from 1959 right up to the signing of the S & P agreement that took place on 25 June 1993. With respect, those facts are totally irrelevant as they were not known and could not be known, even after due diligence, by Raja Zainal Abidin at the time when he executed the S & P agreement. Raja Zainal Abidin was handicapped by lack of material in the statutory declaration of Goh.

Now, even if the facts and events that transpired prior to the execution of the S & P agreement dated 25 June 1993 were to be considered their relevance would only be to show Goh's conduct when he lodged that private caveat. But that would not help Goh at all because his statutory declaration as explained in the early part of this judgment was nothing more than an exercise in futility. Be that as it may, it is germane to mention that:

(1) at the time of the purported creation of the trust, the entity by the name of Mingshu Syndicate was not in existence;

(2) the group of individuals that operated under the name of Mingshu Estates and Johore Farms and Plantations are not the same group of individuals that formed Mingshu Syndicate when it was registered as a partnership on 19 June 1963;

(3) when Mingshu Syndicate was registered on 19 June 1963, both Goh and Ho were not partners of that syndicate;

(4) both Goh and Ho were also not members of Mingshu Estates and Johore Farms and Plantations;

(5) if the alleged trust was in existence, Long would have acted contrary to the alleged trust when he failed or refused or neglected to transfer the said land to the nominees of Mingshu Syndicate by delivering blank forms as requested by the syndicate — this was on 4 November 1968; and finally

(6) Goh's statutory declaration in support of his private caveat failed to disclose all these facts.

Who has a better equity?

The classical case of *Abigail v Lapin & Anor* [1934] AC 491; (1934) 51 CLR 58 should perhaps be considered at this juncture. There the registered proprietors of land under the Real Property Act 1900 (NSW), by transfers absolute in form and expressed to be made in consideration of a money payment, transferred the land to the nominee of a creditor as security for the debt. The transferee was registered as proprietor in pursuance of the transfer. The creditor without the knowledge or consent of the transferors, who had not lodged a caveat, raised a loan for himself upon the security of the land and caused his nominee, as the registered proprietor, to execute a registrable mortgage over the land in favour of the lender. The lender had no notice that the tranferors had any interest in the land. He did not search the register, and did not register his mortgage. It was held that the lender had a better equity than that of the transferors, because the transferors were bound by the consequences of their acts in arming their transferee with the power to deal with the land as owner, and, as the title on the register was clear, the lender's failure to make a search was immaterial. Lord Wright delivering the judgment of the Privy Council had this to say:

> The Full Court of New South Wales regarded the present case as governed in principle by *Butler v Fairclough* (1917) 23 CLR 78, where there was a conflict of equities between a prior equitable encumbrancer who had lodged no caveat and a subsequent transferee who had, after a search of the register and without notice of the unregistered equitable charge, paid the consideration. It was held that the former was postponed: Griffith CJ, thus summed up the position:
>
> > 'It must now be taken to be well settled that under the Australian system of registration of titles to land the courts will recognize equitable estates and rights except so far as they are precluded from doing so by the statutes. This recognition is, indeed, the foundation of the scheme of caveats which enables such rights to be temporarily protected in anticipation of legal proceedings.'

Griffith CJ at pp 91 and 92 next dealt with a general statement of the law and propounded a now famous principle applicable to Raja Zainal Abidin and which merits reproduction in full. That principle was worded thus: A

> In dealing with such equitable rights the courts in general act upon the principles which are applicable to equitable interests in land which is not subject to the Acts. In the case of a contest between two equitable claimants the first in time, all other things being equal, is entitled to priority. But all things must be equal, and the claimant who is first in time may lose his priority by any act or omission which had or might have had the effect of inducing a claimant later in time to act to his prejudice. Thus, if an equitable mortgagee of lands allows the mortgagor to retain possession of the title deeds, a person dealing with the mortgagor on the faith of that possession is entitled to priority in the absence of special circumstances to account for it. B C

It must be stressed that though there was no caveat lodged in *Abigail v Lapin*, yet what was said by Griffith CJ, and as applied by Lord Wright should equally apply to the facts of the present case. Now, even though Goh and Ho had lodged caveats, particularly Goh who had lodged a private caveat in point of time earlier than the S & P agreement executed between Long and Raja Zainal Abidin, yet the acts or omissions of Goh or Ho or Mingshu Syndicate had the effect of inducing Raja Zainal Abidin to act to his prejudice. These acts or omissions may be summarized as follows: D E

(1) deposited, negligently, the issue document of title with Long and armed him with the means to hold himself out to the world at large that he was/is the legal and beneficial owner of the said land;

(2) failed to procure the due registration of the said land into the name or names of any of the partners of Mingshu Syndicate or for that matter in the name of Mingshu Syndicate for almost three decades; F

(3) negligently allowed Long to be registered as the owner of the said land and let that state of affairs remain for almost three decades;

(4) failed to endorse on the register document of title to the three pieces of land (including the said land) that Long held those lands as a 'trustee' for Mingshu Syndicate as envisaged under s 344 of the NLC; G

(5) failed to lodge trust caveats on the three pieces of land (including the said land) and deposit evidence of that trust with the land registry as envisaged in the NLC (see ss 332 and 333 of the NLC); and H

(6) Goh failed to state clearly and precisely the nature and ground of his claim when he filed his statutory declaration in support of his private caveat on the said land.

Consequently, ignorant of those acts or omissions, Raja Zainal Abidin paid the full purchase price of RM8m to Long thereby giving Raja Zainal Abidin a better equity than Goh or even Ho. Reverting back to *Abigail v Lapin & Anor*, there it was held, inter alia, that parting with possession of the issue document of title and arming a third party with ostensible title I

was sufficient neglect on the part of the earlier claimant. Thus, arming Long with the issue document of title to the said land for almost three decades and compounded by the fact that Long had delivered the same to Raja Zainal Abidin would certainly give priority to the latter. Goh's earlier equity had to be postponed in favour of Raja Zainal Abidin.

Briggs J in *Haroon bin Guriaman v Nik Mah bte Nik Mat & Anor* [1951] MLJ 209, stated the law lucidly in the following words [at p 211]:

> I think that where a purchaser under an agreement for sale of land does not impose a caveat to protect his interests, does not obtain possession of an issue copy document of title, and does not take physical possession of the land, he is guilty of gross negligence and his equity should be postponed to the equity of a later purchaser of the same land who has taken any of those steps. On this ground, I have no doubt that Nik Mah's equity should be preferred to Haroon's, subject to the question, 'What was the effect of the caveat?'

Again, though there was no caveat lodged in *Haroon bin Guriaman*, the illuminating general principles set out therein can be used as guidelines to assist this court.

Lee Hun Hoe CJ (Borneo), as he then was, in delivering the judgment of the then Supreme Court in *Ng Kheng Yeow v Chiah Ah Foo & Ors* [1987] 2 MLJ 330 at p 331 col 1I–col 2A, had this to say:

> By paying the full purchase price the fourth respondent had become the beneficial owner. The first three respondents were merely bare trustees for the fourth respondent. There was therefore no interest against which the appellant's caveat could lie.

In another part of the judgment, his Lordship said thus [at p 331 col 2F–G:

> On the facts of this case the entry of a private caveat by one party does not necessarily mean that he has better priority against another who has not as yet lodged one. In *Crosbie-Hill v Sayer* [1908] 1 Ch 866 at p 875 on the question of priority Parker J stated at p 875:
>
> > '... The mortgages to the plaintiffs and the mortgage to the first two defendants are thus all of them equitable mortgages only, and the question I have to decide is whether the plaintiffs or these two defendants have the better equity ...'

This passage found support in *Zeno Ltd v Prefabricated Construction Co (Malaya) Ltd & Anor* [1967] 2 MLJ 104, where the Federal Court held, inter alia, that the caveat established priority and the onus was therefore on the holders of a subsequent equity to show facts which rendered it inequitable for the holder of a prior equity to insist as against him on that priority. Although priority in time is the ordinary test, in the final analysis where evidence discloses some act or omission on the part of the holder of a prior equity the rule that 'who has the better equity' as stated by Parker J in *Crosbie-Hill v Sayer* [1908] 1 Ch 866 applied.

Applying the principles as stated in these two authorities, Raja Zainal Abidin held the titles to the three pieces of land and had vacant possession

of these lands including the said land as compared to both Goh and Ho. The private caveat lodged by Goh failed to give proper notice of the alleged interest as it was not a trust caveat and the statutory declaration was not only vague but misleading as well. Ho's caveat too was inconsequential as it was imposed with the full knowledge of Raja Zainal Abidin's contending equity. Of pertinence, it must be remembered that Raja Zainal Abidin had paid the full purchase price and on the authorities he must be said to be the beneficial owner to the said land. Long merely held the said land as bare trustee for and on behalf of Raja Zainal Abidin. For these reasons, it is my judgment that Raja Zainal Abidin's equitable interest ought to be preferred to that of Goh or Ho.

Statute-barred

Goh deposed in his affidavit that Long held the said land on trust for Mingshu Syndicate. Goh also deposed that Long had agreed on 2 November 1968 to transfer the said land to Mingshu Syndicate and that Long had also agreed to hand the blank transfer forms to Mingshu Syndicate's solicitors by 4 November 1968 but Long somehow failed to perform these obligations. It would not be incorrect to say that despite Long's disobedience to carry out his obligations as deposed to by Goh in his affidavit, yet the partners of Mingshu Syndicate including Goh and Ho took no steps to assert their rights to the said land. Their indolence and gross procrastination must surely be construed against them. The axe of limitation must fall and fall hard against them. In my judgment, Goh and Ho's cause of actions would have accrued on 4 November 1968 when Long failed to hand the blank transfer forms to Mingshu Syndicate's solicitors and the last date for filing their writs would be on 3 November 1974 (see s 22(2) of the Limitation Act 1953 where within six years after the right of action first accrued the writ must be filed). In *Tan Shiang Shong v Tan Lee Choon & Anor* [1985] 2 MLJ 369, SC, the facts were that there was a contract between the beneficiaries to the estates of two deceased persons to transfer certain lands which were still registered in the name of the deceased. There was no contract of sale, no purchase money was paid and no possession of the land was given to the appellant. Only the extracts of title were handed over. The appellant took no action to acquire possession of the land but waited 21 years to file the action for specific performance. The learned trial judge dismissed the action as being statute-barred. The appellant appealed. It was held that the appellant had not acquired any equitable interest in the land which he would have been entitled to convert to a real right or right in rem by registration of the title deeds in his name under the NLC. All that the appellant had was a right ex contractu to sue the respondents for breach of contract — but this remedy was also barred by s 9(1) of the Limitation Act 1953. The Supreme Court explained that in order for the statutory exception to s 22 of the Limitation Act 1953 to apply, the property must be subject to a trust and a person has entered into possession or received the rent of that property with full notice of the trust — thus showing a fiduciary capacity. Here, Raja Zainal Abidin did not

A have full notice of any trust since the caveat imposed was not a trust caveat and the statutory declaration failed to disclose the existence of the alleged trust. The Supreme Court there further held that as the appellant had yet to fully execute the contract, the appellant had not acquired any equitable interest in the land, ie a right of rem which he would have been entitled to convert to a real right or right in rem by registration. Now, although Goh B and Ho may have exercised their rights to require Long to transfer the said land to their nominees and such exercise may be said to have given them a right ad rem against Long, yet that right has yet to be converted into a right in rem by registration and, consequently, just like the appellant in *Tan Shiang Shong*'s case, both Goh and Ho merely have a remedy ex C contractu against Long and not a right to the said land. As to the distinction between rights ad rem or personal rights and rights in rem or real rights, Thomson J (as he then was) succintly explained it in *Bachan Singh v Mahinder Kaur & Anor* [1956] MLJ 97, in the following terms [at p 98]:

> ... Where there is a valid binding contract for the sale of land, the purchaser, D when he has performed his side of the contract, acquires a right ad rem which is a right in personam. In other words, he has acquired a right to the land as against the vendor personally but not as against the world as a whole, and in due course, that right can become a real right good against the world as a whole on registration in accordance with the Land Code (FMS Cap 138).

E Learned counsel for both Goh and Ho submitted that limitation has yet to set in because the cause of action only accrued on 25 June 1993 when Long executed the S & P agreement to sell the three pieces of land (including the said land) to Raja Zainal Abidin. I beg to disagree. That cause of action accrued way back on 4 November 1968. Mingshu F Syndicate's solicitors were not vigilant, they slept on their clients' rights and they were negligent. Why must Raja Zainal Abidin be held at ransom and be accountable for the negligence of Mingshu Syndicate's solicitors? In my judgment, Goh or Ho or Mingshu Syndicate should proceed against their solicitors for negligence or alternatively proceed against Long for breach of contract when Long sold the three pieces of land (including the G said land) to Raja Zainal Abidin.

Laches

If I have erred in construing that Goh or Ho or Mingshu Syndicate's interests are statute-barred, I must next consider whether the doctrine of H laches would prevent them from asserting those interests.

On laches, Sir Barnes Peacock in *Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 221, had this to say:

> Now the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, I either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy

> were afterwards to be asserted, in either of these cases, lapse and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

Here, there was substantial delay. The alleged beneficiaries had done nothing to have the said land transferred into their or their nominees' names for almost 30 years. They stood idle even after Long allegedly promised to transfer the said land on 4 November 1968. They further allowed Long to be the registered proprietor for almost 30 years and at the same time they failed to lodge a trust caveat or to endorse on the title that Long held the said land as a trustee. Neither did they institute legal action against Long for his failure to deliver the blank transfer forms to Mingshu Syndicate's solicitors. These delays are certainly material and it would be unjust for this court to construe such delays against Raja Zainal Abidin. On the contrary, Goh or Ho or Mingshu Syndicate had individually or cumulatively misled Raja Zainal Abidin to act to his prejudice by paying RM8m to Long.

On laches and acquiescence, an interesting case arose in *Allcard v Skinner* (1887) 36 Ch D 145. There the facts were as follows. In 1868, A was introduced by N, her spiritual director and confessor, to S, the lady superior of a sisterhood, and became an associate of the sisterhood. N was one of the founders and also the spiritual director and confessor of the sisterhood, which was an association of ladies who devoted themselves to charitable works. In 1871, A, having passed through the grades of postulant and novice, became a professed member of the sisterhood and bound herself to observe (inter alia) the rules of poverty, chastity, and obedience, by which the sisterhood was regulated, and which were made known to her when she became an associate. These rules were drawn up by N. The rule of poverty required the member to give up all her property, either to her relatives, or to the poor, or to the sisterhood itself, but the forms in the schedule to the rule were in favour of the sisterhood, and provided that property made over to the lady superior should be held by her in trust for the general purposes of the sisterhood. The rule of obedience required the member to regard the voice of her superior as the voice of God. The rules also enjoined that no sister should seek advice of any extern without the superior's leave.

A, within a few days of becoming a member, made a will bequeathing all her property to S, and in 1872 and 1874, having become possessed of considerable property, handed over and transferred several large sums of money and railway stock to S. In May 1879, A left the sisterhood and immediately revoked her will, but made no demand for the return of her property until 1885, when she commenced an action against S, claiming the return of her property on the ground that it was made over by her while

A acting under the paramount and undue influence of S, and without any independent and separate advice.

It was held by Kekewich J that although A had voluntarily and while she had independent advice entered the sisterhood with the intention of devoting her fortune to it, yet as at the time when she made the gifts she B was subject to the influence of S and N, and to the rules of sisterhood, she would have been entitled on leaving the sisterhood to claim the restitution of such part of her property as was still in the hands of S, but not of such part as had been expended on the purpose of the sisterhood while she remained in it.

C It was held by the Court of Appeal (Cotton LJ dissenting) (affirming the decision of Kekewich J) that under the circumstances the plaintiff's claim was barred by her laches and acquiescence since she left the sisterhood.

Lindley LJ delivered a separate judgment in *Allcard v Skinner* (supra) and this was what he said [at p 186]:

D

> I proceed to consider the second point which arises in this case, namely, whether it is too late for the plaintiff to invoke the assistance of the court. More than six years had elapsed between the time when the plaintiff left the sisterhood and the commencement of the present action. The action is not one of those to which the Statute of Limitations in terms applies; nor is that statute pleaded. But this action very closely resembles an action for money E had and received where laches and acquiescence are relied upon as a defence: and the question is whether that defence ought to prevail. In my opinion it ought. Taking the statute as a guide, and proceeding on the principles laid down by Lord Camden in *Smith v Clay* 3 Bro CC 639n, and by Lord Redesdale in *Hovenden v Lord Annesley* 2 Sch & Lef 607 at p 630, the lapse of six years becomes a very material element for consideration. It F is not, however, necessary to decide whether this delay alone would be a sufficient defence to the action. The case by no means rests on mere lapse of time. There is far more than inactivity and delay on the part of the plaintiff. There is conduct amounting to confirmation of her gift. Gifts liable to be set aside by the court on the ground of undue influence have always been treated as voidable and not void.

G In another part of his judgment, Lindley LJ had this to say [at p 188]:

> Ignorance which is the result of deliberate choice is no ground for equitable relief; nor is it an answer to an equitable defence based on laches and acquiescence. Again, it was urged that the defendant has not been prejudiced by the delay, and that nothing has been done on the faith that the plaintiff H would not require her money to be returned to her. But I do not think this material. I treat the money as absolutely given to the sisterhood when the plaintiff determined not to ask for it back, which she did in 1880. But, further, I cannot come to the conclusion that nothing has been done on the faith of the money being the property of the sisterhood. It is contrary to human nature to suppose that the plaintiff's money was not for years I regarded as the money of the sisterhood, and that the sisterhood did not act on that assumption and make their arrangements accordingly.

Just like *Allcard v Skinner*, it would truly be unjust after almost 30 years to allow the alleged beneficiaries to assert their interests to the said land as

against that of Raja Zainal Abidin. Goh, Ho and the other alleged beneficiaries were businessmen, intelligent, fully aware of their legal rights and most importantly they had legal advice on the matter. It must be inferred that when Long refused to hand over the blank transfer forms on 4 November 1968, they had the advantage of legal advice and they chose to let Long continue to be the registered proprietor of the said land. Bluntly put, they have acquiesced Long's title to the said land for almost 30 years and now they are estopped and barred by laches from asserting their alleged interests.

The position of Long as a bare trustee

It is trite law that when the purchaser under a sale and purchase agreement of a piece of land has paid the purchase price in full to the vendor, the vendor henceforth holds the land as a bare trustee for the purchaser and the vendor no longer enjoys any beneficial interest to the land. This principle is crystallized in *Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors* [1974] 2 MLJ 45, FC, which was reaffirmed by the then Supreme Court in *Yeong Ah Chee v Lee Chong Hai & Anor and other appeals* [1994] 2 MLJ 614.

Likewise in the present case Raja Zainal Abidin had paid the full purchase price of RM8m to Long and Long, in the circumstances, held the said land as bare trustee for Raja Zainal Abidin. That being the case, the caveat of Goh's as extended by the High Court on 20 June 1994 and that of Ho's should not be allowed to blot the titles of the three pieces of land (including the said land) which now rightly belong to Raja Zainal Abidin.

It is pertinent to point out that the ex parte extension of Goh's private caveat by the High Court on 20 June 1994 worded in the following words: *'Kaveat persendirian ... dilanjutkan sehingga perintah selanjut mahkamah ini ...'* would throw the net wider by extending Goh's private caveat which was scheduled to expire by statute (s 328 of the NLC) on 13 January 1995 to an indefinite date. Section 328 of the NLC permits the life-span of a private caveat for a period of six years unless it is sooner withdrawn under s 325 of the NLC or lapses under s 326(1B) of the NLC or is withdrawn by the Registrar pursuant to an order of the court under s 327 of the NLC. It is my considered view that although the High Court has the power to extend the life-span of a private caveat, it should not extend it beyond six years. The general authority of the High Court under s 417 of the NLC must be distinguished with the powers given to a judge of the High Court under its inherent jurisdiction. Authority and power are two different terms. They are not synonymous with one another and neither are they interchangeable (*KI Muhiudeen Rawther v KEP Abdul Kassim & Ors* [1959] 25 MLJ 257). The facts alluded to by Goh in his affidavit affirmed on 13 June 1994 in support of his ex parte application to extend the private caveat on the said land were not set out in the statutory declaration of Goh in support of his private caveat that was lodged on 14 January 1989. Those facts as set out in the affidavit of Goh affirmed on 13 June 1994 were not known to Raja Zainal Abidin when he entered into

A the S & P agreement for the purchase of the said land. If Raja Zainal Abidin knew of those facts, his position might be different and the legal remedy available to him might also be different. On the facts as presented to me, Raja Zainal Abidin had purchased the said land bona fide for value from Long and this court must give effect to it.

B *Acquisition of the said land by the Government*

The affidavit in encl 28 that was affirmed on 2 June 1995 adverted to a *Gazette* notification dated 27 December 1992 to the effect that the said land was acquired for the second causeway: *'Cadangan pengambilan balik*
C *tanah kerana laluan kedua Malaysia-Singapura dan pembangunan persekitarannya'* and relying on this point, it was argued that there was lack of bona fides on the part of Raja Zainal Abidin when he entered into the S & P agreement with Long on 25 June 1993. In rebuttal, it was argued that Raja Zainal Abidin did not know that the said land was earmarked for acquisition and that ignorance was reflected by cl 16 of the S & P agreement
D where it was provided, inter alia, that where the said land was being acquired or intended to be acquired by the Government, Raja Zainal Abidin may exercise the option to withdraw from the transaction and Long shall upon written request by Raja Zainal Abidin immediately refund all sums paid thereto and the S & P agreement shall be deemed to be
E cancelled. In my judgment even if the S & P agreement was entered into by both parties with full knowledge of the intended acquisition and even if the transaction was meant to benefit Raja Zainal Abidin, I could not see any impropriety as both parties were entitled to and were free to enter into the S & P agreement for the sale and purchase of the said land. On the assumption that Raja Zainal Abidin purchased the said land with full
F knowledge of the intended acquisition, that by itself cannot amount to fraud. To establish fraud, Goh or Ho or even Mingshu Syndicate must prove beyond reasonable doubt and this they failed to do *(Saminathan v Pappa* [1981] 1 MLJ 121, PC).

In view of the lengthy submissions of counsels acting for both parties,
G I decided to take an arduous route as demonstrated above to resolve those submissions as I felt that that was the best method to adopt in the circumstances. As I see it, the arguments of both counsels revolved on two main issues, namely:

H (1) Whether Raja Zainal Abidin is an aggrieved party? I will answer this question in the affirmative for the reasons set out in the early part of this judgment.

(2) Who has the better equity? I will also answer this question in favour of Raja Zainal Abidin for the reasons set out in the early part of this judgment.

I *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719, laid down three stages which have to be inquired into before deciding whether the private caveat should remain on the register document of title

or be removed. It would be useful to reproduce the relevant parts of that judgment at pp 741D, 742E and 743C: A

> The first stage is the examination of the grounds expressed in the application for the caveat. If it appears that the grounds stated therein are insufficient in law to support a caveat, then cadit quaestio, and the caveat must be removed without the necessity of going any further. B
>
> ...
>
> The matter does not come to an end once the caveator satisfies the court that his claim as expressed in the application in Form 19B amounts in law to a caveatable interest. He must go on to show, in appropriate cases, that, based on the affidavits filed, his claim discloses a serious question meriting a trial. This then is the second stage. The degree of proof that has to be offered will, of course, vary from case to case. C
>
> ...
>
> The third stage is arrived at only after the first two hurdles have been crossed by the caveator. Here the question to be asked relates to the balance of justice, or what Lord Diplock termed in *Eng Mee Yong* as 'the balance of convenience'. As to the matters that go to determine in which direction the balance should tilt, these have already been set out in such clear terms by Lord Diplock in *Eng Mee Yong* that mere repetition becomes unnecessary. D

In my judgment, applying *Luggage*, to the facts of the present case, the caveators, Goh and Ho, failed to satisfy the first stage and, consequently, the caveats lodged by them must be removed forthwith without the necessity of considering the second or the third stages. E

It is unfortunate that Form 19B of Goh's private caveat was not exhibited by both parties and the copy of Goh's statutory declaration too were not made available to the court. This equally applies to Ho also. It was only in the affidavit of Raja Zainal Abidin at encl 8 at para 7, that the contents of Goh's statutory declaration were quoted and this has been set F out in the course of this judgment. Suffice for me to say that the grounds stated therein are clearly insufficient in law to support the existence of a private caveat as it lacked particulars.

Concerted attacks were made in regard to the cash payment of RM8m to Long by Raja Zainal Abidin and this was said to reek of fraud. G With respect, I am not able to say that it was improper or sinister or illegal for payment to be made in cash. Indeed Raja Zainal Abidin swore an affidavit alluding to such cash payment and this was confirmed by the affidavit of Tan Jee Yien (encl 20) together with the statutory declarations of both Long and his wife. Again nothing sinister can be seen in the statutory declarations of Long and his wife. It was perfectly in order for H Raja Zainal Abidin to have insisted that both Long and his wife swore affidavits to confirm that RM8m had been paid and I am not prepared to hold that these were done illegally. It was also argued that the statutory declarations of both Long and his wife were dated 17 June 1993 whereas the S & P agreement was dated 25 June 1993 — conflicting dates that gave I rise to suspicion, but this anomaly can be explained as rightly submitted by counsel for Raja Zainal Abidin that by the date appearing below the words 'Signed by the vendor in the presence of:', and that date was '17 June

1993', and that was the date wherein RM8m was said to be paid to the vendor, Long. Next, it was also argued as to the necessity of Long's statutory declaration which purported to reflect on the soundness of Long's mind at that material time. It was an undisputed fact that Long was approximately 79 years of age at the material time and he was not in the best of health and if Long did not declare by way of a statutory declaration as to the receipt of RM8m there would certainly be an allegation that Long was of unsound mind at that material time and especially at the time when Long signed the S & P agreement. Taken from this angle, the existence of the statutory declarations of both Long and his wife were indeed material as it went to show that the sum of RM8m had been paid to Long.

Next, it was argued that Long had affixed his right thumbprint to the S & P agreement instead of signing it. This was said to be highly improper. I cannot accede to this submission. In my judgment, thumbprinting an agreement is the safest way to ensure its authenticity and the best way to ward off any allegation of fraud. It is also undisputed that Long was partially paralysed in 1992. The partial paralysis was physical in nature. It had nothing to do with his mind and that physical paralysis must be the reason as to why Long thumb printed the S & P agreement. Even Long's statutory declaration bore his right thumb print.

In encl 25 at exh RY1, the writ dated 19 October 1994 was exhibited. It is an undisputed fact that this originating summons was filed on 19 July 1994 and on the date of the hearing of this originating summons, the writ had yet to be served. It is apparent that the writ as worded is defective because Mingshu Syndicate should not be cited as the first plaintiff. As a partnership, Mingshu Syndicate should be suing as a firm. It is also an undisputed fact that Long had died and that he was all along a Singaporean holding a Singapore citizenship and therefore out of jurisdiction. On 19 October 1994, Long was still alive, he died only on 12 November 1994 and yet there was no attempt to serve the writ. It is obvious also that with the death of Long and Goh, the writ will have to be amended and then it will be served. For how long that will be done is not known. It is anybody's guess. The writ or an amended writ is said to be issued when the plaintiff or his solicitor presents the writ or an amended writ and a copy or suitable number of copies to the registrar of the High Court. On receipt of these documents, the registrar will then issue a number to the writ or the amended writ and he must next sign it, date it and affix the seal of the court. A copy of the writ or the amended writ or copies thereof are then handed over to the plaintiff or his solicitors for the purpose of service to the defendant or defendants as the case may be (see O 11 r 6 of the RHC). It goes without saying that there must be a cause of action before any originating process is issued *(Syarikat Jaya v Star Publications (M) Bhd* [1990] 1 MLJ 31). The original writ or the original amended writ will always be retained in the registry of the High Court. One or more concurrent writs, which are true copies of the original with such differences only (if any) as are necessary, may at the plaintiff's request be issued either when the original writ or the original amended writ is issued or at any time

thereafter before the original ceases to be valid (see O 6 r 5 of the RHC). As Long had died and his executor or executrix is outside jurisdiction, the issue of a concurrent writ will be the best solution. It is plain therefore that concurrent writs are issued for the purpose of service within and/or outside the jurisdiction of the court or where the original writ is lost, to have a duplicate of the original writ. Consequently, the life-span of a concurrent writ will be dependent on the validity period of the original writ. It is crucial to remember that the date of the issue of the writ may be crucial to ascertain a valid cause of action or the issue of limitation. Leave of court is also not required for the issue of a writ but such leave is required when the writ is to be served out of the jurisdiction as set out in O 11 of the RHC. The real effect of all these delays would simply be to frustrate Raja Zainal Abidin in his attempt to register the said land in his name and, in the context of this case, since the said land has been acquired by the Government, I am requested to make a vesting order in favour of Raja Zainal Abidin. I acceded to this request.

Briefly, the writ dated 19 October 1994 alleges fraud and breach of trust against Long and it also challenges the bona fides of Raja Zainal Abidin in purchasing the said land. All these points have been alluded to, one way or the other, in the course of this judgment.

For the reasons adumbrated above, prayers 3, 4 and 5 of encl 9 were granted by me. In regard to prayer 5, I made a consequential order that the damages/compensation be assessed by the senior assistant registrar. I too granted prayer 6 of encl 9 but since the said land has been acquired by the Government, I made an order that the compensation or award pursuant to the acquisition be made to Raja Zainal Abidin and, consequently, a vesting order in favour of Raja Zainal Abidin was also ordered by me. Prayer 7 of encl 9 was also ordered by me and these costs are to be assessed by the senior assistant registrar.

Order accordingly.

Reported by Anne Khoo